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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/934,319 | 08/21/2001 | Luis Alberto Commisso | 1.856.99 | 7992 |

7590 03/02/2004

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| EXAMINER |
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DONNELLY, JEROME W

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| ART UNIT | PAPER NUMBER |
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3764

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934319

Applicant(s)

Commiso

Examiner

Jerome W Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ___ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Election 11-13-03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application. 1-23
- 4a) Of the above claim(s) 13-23 is/are withdrawn from consideration. 13-23
- 5) ☐ Claim(s) ___ is/are allowed.
- 6) ☒ Claim(s) ___ is/are rejected. H2
- 7) ☐ Claim(s) ___ is/are objected to.
- 8) ☐ Claim(s) ___ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ___ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ___ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 6, 7, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Makikawa et al.

Makikawa et al disclose an exercise assembly comprising a platform (5a) a base (6), a support assembly (23, 28, 30, 31) and wherein said platform and said support are structured to direct the platform through a plurality of paths.

The control means, sensors, processors and display means are disclosed and inherent in the device of Maikawa et al as broadly claimed not the display means 1 and schematic of fig 2.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoyle et al.

Hoyle et al discloses a device comprising a platform (at 70) a base (10) and a support assembly (12) said platform and said support assembly cooperatively structured to direct the platform through a plurality of paths of movement.

Hoyle et al however does not disclose his device wherein the support structure is substantially semi-circular as claim.

Hoyle however does disclose his device wherein his support member does have opposite free ends connected indirectly to said platform.

The examiner however notes that to manufacture the support member 12 of Hoyle of a semi-circular shape would have been one of several shapes such as a V or a U and that so long as the support member includes two free ends the functionality of the support member would be the same.

Applicant have presented no reasoning why the particular configuration of a semi-circular support member is significant or is anything more than one of numerous configurations obvious for the purpose of providing support member having two free ends to connect to a platform.

Claims 1, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hotas.

Hotas discloses a device comprising a platform, a base, a support assembly (19) configured to move through a plurality of paths and weights secured to an end of an arm adjacent an outer end.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoyle et al in view of McIntyre.

Hoyle discloses the device of claim 3 substantially as claimed absent the feature of the pivot axis/or the free ends of the support member coinciding with the an axis which extends transversely through an axis of rotation of an ankle joint.

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McIntyre however, teaches provide a support member having an axis as claimed.

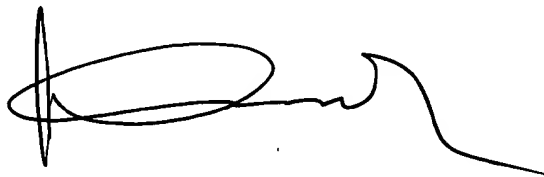
Given the above teaching of McIntyre the examiner notes that to configure the support member of Hoyle et al wherein the pivot axis of the device extends transverse through the axle of a user is known and found to be useful in the art of manufacturing ankle exercise devices.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the overall device of Escher.

Any inquiry concerning this communication should be directed to Jerome W Donnelly at telephone number 308-2668.

Donnelly/DL

March 2, 2004

A handwritten signature in black ink, appearing to read 'Jerome W. Donnelly', with a long, sweeping horizontal stroke extending to the right.

Jerome W. Donnelly
Primary Examiner